

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

93-cr-105-bbc

v.

JOHN F. SCHULER, JR,

Defendant.

Defendant John Schuler has filed a notice of appeal from the court's March 28, 2012 order denying his motion under Rule 60(b). Defendant has not paid the \$455 filing fee, which makes it necessary to decide whether he is entitled to proceed on appeal in forma pauperis.

As an initial matter, I note that defendant's appeal appears to be untimely. It was not filed within fourteen days of the date of the order denying his motion, and defendant did not include with his notice a motion for an extension of time to file a notice of appeal that was supported by a showing of excusable neglect or good cause for the late filing as Fed. R. App. P. 4 requires. However, district courts do not have authority to deny a defendant's

request for leave to proceed in forma pauperis on the ground that the appeal is untimely. That authority rests solely with the court of appeals. Sperow v. Melvin, 153 F.3d 780 (7th Cir. 1998). Therefore, I will consider defendant's request for leave to proceed in forma pauperis on appeal and deny the motion because defendant's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." I do not need to reach the issue of whether defendant is indigent because I am certifying that the appeal is not taken in good faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. As I noted in the order denying defendant's motion under Rule 60(b), defendant has not shown that he entitled to relief under Fed. R. Civ. P. 60(b). Therefore, I will deny defendant's request to proceed in forma pauperis on appeal.

ORDER

IT IS ORDERED that defendant John Schuler's request for leave to proceed in forma

pauperis on appeal is DENIED.

Entered this 10th day of May, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge